

आयकर अपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ I.T.A. No.148/Viz/2024
(निर्धारण वर्ष / Assessment Year :2017-18)

Thadela Pakeeru, Visakhapatnam. PAN: ABTPT0911D (अपीलार्थी/ Appellant)	Vs.	The Income Tax Officer, Ward-2(1), Visakhapatnam. (प्रत्यर्थी/ Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Smt. A. Aruna, AR
प्रत्यर्थी की ओर से / Respondent by	:	Dr. Aparna Villuri, Sr. AR
सुनवाई की तारीख / Date of Hearing	:	16/07/2024
घोषणा की तारीख/Date of Pronouncement	:	25/07/2024

ORDER

PER DUVVURU RL REDDY, Judicial Member :

This appeal filed by the assessee is against the order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi ["Ld. CIT(A)-NFAC"] in DIN & Order No. ITBA/NFAC/S/250/2023-24/1060992802(1) dated 15/02/2024 arising out of the order passed U/s. 271D of the Income Tax Act, 1961 ["the Act"] for the AY 2017-18.

2. Briefly stated the facts of the case are that the assessee, an individual, filed his return of income for the AY 2017-18 on 28/04/2017 declaring a total income of Rs. 4,53,180/-. During the assessment proceedings, the Ld. AO observed that the assessee had received cash of Rs. 11,27,000/- out of the total sale consideration of Rs. 31,27,000/- towards sale of immovable property situated at Vadapalem vide Doc No. 3515 of 2016. The Ld. AO by observing that since the assessee has received cash of Rs. 11,27,000/- in contravention of the provisions of section 269SS of the Act, a notice U/s. 274 r.w.s 271D of the Act was issued to the assessee on 06/02/2020 soliciting compliance on 17/02/2020 and to show cause as to why an order imposing penalty should not be made U/s. 271D of the Act. In response to the show cause notice dated 6/2/2020, the assessee has field his submissions wherein the assessee pleaded that the provisions of section 269SS of the Act were not made known to the assessee by the registration authority nor the assessee was aware of the relevant rules. However, the Ld. AO did not consider the submissions made by the assessee and levied penalty of Rs. 11,27,000/- U/s. 271D of the Act vide order dated 05/02/2022. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A)-NFAC. On appeal, the Ld. CIT(A)-NFAC

passed ex-parte order and dismissed the appeal of the assessee. Aggrieved by the order of the Ld. CIT(A)-NFAC, the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

- “1. *The order of the Ld. CIT(A) is contrary to the facts and also the law applicable to the facts of the case.*
2. *The Ld. CIT(A) is not justified in deciding the appeal without giving sufficient opportunity of hearing to the appellant.*
3. *The Ld. CIT(A) ought to have cancelled the penalty of Rs. 11,27,00/- levied by the Assessing Officer U/s. 271D of the Act on the ground that the case of the appellant falls within the scope of reasonable cause provided U/s. 273 of the Act.*
4. *Any other ground that may be urged at the time of appeal hearing.”*

3. At the outset, the Ld. Authorized Representative [“Ld. AR”] submitted before us that the Ld. CIT (A)-NFAC has passed ex-parte order without providing proper opportunity to the assessee of being heard. It was therefore pleaded that the matter may be remitted back to the file of the Ld CIT (A)-NFAC in order to provide one more opportunity to the assessee of being heard.

Ld. Departmental Representative [“Ld. DR”], on the other hand, vehemently opposed to the submissions of the Ld. AR and argued that proper and sufficient opportunities had been provided to the assessee however, on the given dates of hearing, neither the assessee nor his

Representative has filed any details / submissions as called for by the Ld. CIT (A)-NFAC. It was further submitted that, under these circumstances, the Ld. CIT (A)-NFAC had no other option but to pass ex-parte order based on the materials available on record. Hence, it was pleaded that the order passed by the Ld. CIT(A)-NFAC does not call for any interference.

4. We have heard the rival submissions and carefully perused the materials on record. On examining the facts of the case, we find that the Ld. CIT (A)-NFAC had posted the case on several occasions. However, there was no response on behalf of the assessee before the CIT(A)-NFAC on the dates of hearing with regard to the details / submissions as called for by the Ld. CIT(A)-NFAC. Therefore, the Ld. CIT (A)-NFAC was left with no other option except to adjudicate the appeal ex-parte and dismissed appeal in-limine. In this situation, considering the issues involved in the appeal, as well as considering the prayer of the Ld. AR, and in the interest of justice, we hereby remit the matter back to the file of Ld. CIT (A)-NFAC in order to consider the appeal afresh and decide the case on merits by providing one more opportunity to the assessee of being heard in accordance with the principles of natural justice. At the same breath, we also hereby caution the assessee to promptly co-operate before the Ld. CIT (A)-NFAC in the proceedings failing which the Ld. CIT (A)-NFAC

shall be at liberty to pass appropriate order in accordance with law and merits based on the materials on the record. It is ordered accordingly.

5. In the result, appeal filed by the assessee is allowed for statistical purposes as indicated hereinabove.

Pronounced in the open Court on 25th July, 2024.

Sd/-
(एस बालाकृष्णन)
(S.BALAKRISHNAN)
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-
(दुव्वूरु आर.एल रेड्डी)
(DUVVURU RL REDDY)
न्यायिकसदस्य/JUDICIAL MEMBER

Dated : 25/07/2024
OKK - SPS

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee – Thadela Pakeeru, D.No. 6-29/2/2, Kaarya Homes, Block-2, Flat No.102, Paradesipalem, Marikavalasa, Visakhapatnam, Andhra Pradesh.
2. राजस्व/The Revenue – The Income Tax Officer, Ward-2(1), O/o. ITO, Infinity Towers, Sankaramatham Road, Visakhapatnam, Andhra Pradesh-530016.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax (Appeals),
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam